

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

PARSON FINANCE PANAMA S.A.,

Defendant.

Adv. Pro. No. 11-02542 (CGM)

**STIPULATION AND ORDER**

Plaintiff Irving H. Picard (the “Trustee”), as trustee of the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–lll, and the chapter 7 estate of Bernard L. Madoff, and defendant Parson Finance Panama S.A. (“Defendant,” and with the Trustee, the “Parties”), by and through their respective undersigned counsel, state as follows:

**WHEREAS**, on August 18, 2011, the Trustee commenced adversary proceeding number 11-02542 (the “Action”) against Defendant to recover a subsequent transfer Defendant allegedly received from Fairfield Sentry Limited;

**WHEREAS**, on July 6, 2014, the District Court entered an Opinion and Order ruling on extraterritoriality and international comity issues (the “District Court ET Decision”) and returned certain matters to the Bankruptcy Court for further proceedings consistent with the District Court ET Decision. *See SIPC v. BLMIS (In re Madoff)*, 513 B.R. 222 (S.D.N.Y. 2014);

**WHEREAS**, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court ET Decision”) dismissing certain claims to recover subsequent transfers received from Fairfield Sentry Limited (among other initial transferees) on grounds of international comity. *See Picard v. Bureau of Labor Ins. (SIPC v. BLMIS)*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016);

**WHEREAS**, the Bankruptcy Court ET Decision dismissed the claim against Defendant;

**WHEREAS**, on February 25, 2019, the Court of Appeals for the Second Circuit issued an order, *In re Picard*, 917 F.3d 85 (2d Cir. 2019) (the “ET and Comity Decision”) which, *inter alia*, vacated the Bankruptcy Court ET Decision;

**WHEREAS**, on August 29, 2019, Defendants filed a Petition for a Writ of Certiorari in the Supreme Court, which sought review of the ET and Comity Decision and which extended the stay of the Second Circuit’s mandate until the Supreme Court’s final disposition. *See* Petition for Writ of Certiorari, *HSBC Holdings PLC v. Picard*, No. 19-277 (Aug. 29, 2019), 2019 WL 4190391;

**WHEREAS**, on December 20, 2019, the Trustee filed unopposed petitions for permission to appeal pursuant to 28 U.S.C. § 158(d)(2)(A), which respectively sought (i) a direct appeal to the Second Circuit of the Bankruptcy Court’s memorandum decision denying the Trustee’s motion for leave to file amended complaint in one adversary proceeding, *Picard v. Citibank, N.A.*, 608 B.R. 181 (Bankr. S.D.N.Y. 2019), and (ii) a direct appeal to the Second Circuit of the Bankruptcy Court’s memorandum decision granting, in part, the motion to dismiss the Trustee’s amended complaint in another adversary proceeding, *Picard v. Legacy Capital Ltd.*, 548 B.R. 13 (Bankr. S.D.N.Y. 2013) (together, the “Good Faith Appeals”);

**WHEREAS**, on April 23, 2020, the Court of Appeals for the Second Circuit granted the Trustee’s petitions for the Good Faith Appeals. *See In re BLMIS LLC*, Case No. 19-4282 (2d Cir. Apr. 23, 2020), ECF No. 29; *In re BLMIS LLC*, Case No. 19-4283 (2d Cir. Apr. 23, 2020), ECF No. 25.

**WHEREAS**, on June 1, 2020, the Supreme Court denied Defendants’ Petition for a Writ of Certiorari concerning the Second Circuit’s ET and Comity Decision. *See Order, HSBC Holdings PLC v. Picard*, No. 19-277 (2020), 2020 WL 2814770;

**WHEREAS**, also on June 1, 2020, the Court of Appeals for the Second Circuit issued the mandate in respect of the ET and Comity Decision, *In re Picard*, No. 17-2992 (2d Cir. June 1, 2010), ECF Doc No. 1582, vacating the judgments of the Bankruptcy Court in connection with the Bankruptcy Court ET Decision and remanding the matters for further proceedings consistent with this Second Circuit’s ET and Comity Decision;

**WHEREAS**, on August 30, 2021, the Second Circuit issued a consolidated decision in the Good Faith Appeals, holding that in a SIPA liquidation, the good faith defenses provided in 11 U.S.C. § 548(c) and 550(b) are governed by an inquiry notice standard and a SIPA trustee

does not bear the burden of pleading a transferee's lack of good faith. *See In re BLMIS LLC*, 12 F.4th 171 (2d Cir. 2021) (the "Good Faith Decision"); and

**WHEREAS**, on October 13, 2021, the Court of Appeals for the Second Circuit issued the mandate in respect of the Good Faith Decision, vacating the District Court's consolidated good faith decision, *SIPC v. BLMIS*, 516 B.R. 18 (S.D.N.Y. 2014), as well as the Bankruptcy Court's decisions dismissing *Picard v. Citibank, N.A.*, Adv. Pro. No. 10-05345 (CGM) and *Picard v. Legacy Capital Ltd.*, Adv. Pro. No. 10-05286 (CGM). *See* Mandate, Case No. 20-1333 (2d Cir. Oct. 13, 2021), ECF No. 197; Mandate, Case No. 20-1334 (2d Cir. Oct 13, 2021), ECF No. 187;

**IT IS HEREBY STIPULATED AND AGREED**, that Defendant shall respond to the complaint in the Action, Adv. Pro. No. 11-02542 (Bankr. S.D.N.Y. Aug. 18, 2011), ECF No. 1, by January 28, 2022. If Defendant files a motion to dismiss the complaint, such motion shall set forth any and all grounds for dismissal at the pleading stage. The Trustee shall respond to the motion by March 29, 2022, and Defendant shall file its reply by April 28, 2022.

**IT IS HEREBY STIPULATED AND AGREED**, that if Defendant files such a motion to dismiss the complaint, then the parties shall seek oral argument on the motion at the Court's first available convenience.

Dated: December 7, 2021  
New York, New York

By: /s/ Matthew D. Feil  
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Liquidation of Bernard L. Madoff  
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*Attorneys for Defendant Parson Finance  
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**SO ORDERED.**

**Dated: December 13, 2021**  
**Poughkeepsie, New York**



/s/ Cecelia G. Morris

**Hon. Cecelia G. Morris**  
**Chief U.S. Bankruptcy Judge**